IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1) S.B.CRIMINAL REVISION PETITION NO. 627/2003
(Sujaudeen Vs. Jaitoon Banoo)

(2) S.B.CRIMINAL REVISION PETITION NO. 628/2003
(Kayamudeen Vs. Kishmat Banoo)

Date of Order : 06/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sunil Mehta for the petitioner.
Mr. R.K.Charan for the respondent.

BY THE COURT:-

Both these criminal revision petitions under Section 397 r/w Section 401 Cr.P.C., involve common question of law and identical facts and therefore, with the consent of learned counsel for the parties, they are heard and decided together.

The facts and circumstances giving rise to the instant revision petitions are that petitioner Sujaudeen married to non-petitioner Jaitoon Banoo by contracting Nikah and petitioner Kayamudeen married to Kismat Banoo by contracting Nikas according to Muslim Law. However, subsequently, non-petitioners Jaitoon Banoo and Kismat Banoo who are both real sisters contracted Nikah with some other persons and therefore,

both the petitioners who are real brothers filed separate complaints for the offence under Section 494 IPC against the non-petitioners before the Additional Chief Judicial Magistrate, Deedwana (for short 'the trial court' hereinafter) being Criminal Case No.24/98 and 23/98 respectively. The trial court in both the cases came to the conclusion that the complainant petitioners herein proved the case beyond reasonable doubt against the non-petitioners and accordingly non-petitioner Jaitoon Banoo and Kismat Banoo were convicted for the offence under Section 494 IPC and sentence to two years simple imprisonment and a fine of Rs.5000/- in default of payment of fine to further undergo six months simple imprisonment. Both the non-petitioners preferred appeals against the judgment and order of the trial court dated 23.1.2001 before Additional Sessions Judge, Deedwana (for short 'the appellate court' hereinafter) being Appeals No.07/01 (16/02) and 6/01 (15/02) respectively. On re-appreciation of the evidence, the appellate court came to the conclusion that the complainants have established the case beyond reasonable doubt against the appellants therein, however, instead of sentencing the appellants therein at once to any imprisonment extended the benefit of Section 360 Cr.P.C. and Section 4 (1) of the Probation of Offenders Act, 1958 (for short 'the Act of 1958' hereinafter) and released the appellants therein under Section 4 (1) of the Act of

1958 on furnishing personal bond and surety bond of Rs.3000/- each to keep peace and tranquility and be of good behaviour and not to repeat such offence for a period of three years and to appear before the court as and when called upon. The appellate court also directed to pay fine of Rs. 5000/- each to be paid to both the petitioners herein respectively. Aggrieved by the order granting benefit of Section 360 Cr.P.C. and Section 4 (1) of the Act of 1958, both the complainants have preferred these revision petitions.

I have heard learned counsel for the parties.

It is contended by learned counsel for the petitioners that the offence under Section 494 IPC is punishable with seven years imprisonment and in a case of bigamy which is a serious offence, no lenient view is required to be taken, whereas without assigning any reason, the appellate court took a lenient view in extending the benefit of provisions of the Act of 1958.

Learned counsel appearing for the non-petitioner submits that in compliance of the order of the appellate court, the non-petitioners executed a personal bond and surety bond to maintain peace and tranquility, be of good behaviour and not to repeat similar nature of offence for a period of three years and also deposited the fine amount of Rs. 5000/- each and thus the order of the appellate court stands executed. Learned counsel

further submits that both the non-petitioners at the time of their Nikah were 17 and 18 years of age and there had been some differences between the parties and therefore, the non-petitioners went to their parents house and their parents arranged their Nikah with other persons and therefore, the appellate court rightly took a lenient view in extending the benefit of the Act of 1958.

Learned counsel for the petitioners has relied on a decision of Hon'ble Supreme Court in Gopal Lal Vs. State of Rajasthan 1979 Cri. L.J. 652. In that case, the Apex Court reduced the sentence from two years to one year. In the instant case, indisputably, the Nikah of the petitioners with the non-petitioners was at the early age and according to learned counsel for the non-petitioners there had been certain differences between the parties and therefore, the non-petitioners went to their parents house and their parents arranged their Nikah with other persons without getting the marriage (Nikah) contracted with the petitioners dissolved though there had been a plea that there was a Talak but the non-petitioners failed to establish the Talak. But the fact remains that at the relevant time, the non-petitioners were 17 and 18 years of age. Be that as it may. Since the occurrence is of the year 1997 and now almost after 10 years, and it is stated by learned counsel for the non-petitioners

that the petitioners have also now again married by contracting Nikah with some other person, in these circumstances, if any different view with regard to quantum of sentence is taken then in my view it will not serve the ends of justice.

In view of these peculiar facts and circumstances of the case, in my view, no interference in exercise of the revisional jurisdiction is called for. Both the revision petitions are therefore, dismissed.

(H.R.PANWAR),J.

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